

ORIGINAL

OPEN MEETING ITEM



0000169839

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
TOM FORESE
Commissioner
ANDY TOBIN
Commissioner

Arizona Corporation Commission

DOCKETED

APR 20 2016

DOCKETED BY

2015 APR 20 P 3:01

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE PROPOSED
AMENDMENTS OF THE PIPELINE
SAFETY RULES A.A.C. R14-5-202, R14-5-
203, R14-5-204, R14-5-205, AND R14-5-207.

DOCKET NO. RG-00000A-15-0098

**NOTICE OF FILING
STAFF PROPOSED ORDER
APPROVING RENEWAL OF
EMERGENCY RULEMAKING**

Staff hereby provides notice of filing the attached proposed order that would approve Staff to pursue a 180 day renewal of the emergency adoption of the proposed rules that were approved pursuant to an emergency rulemaking by Decision No. 75289.

RESPECTFULLY SUBMITTED this 20TH day of April, 2016.

Charles H. Hains
Attorney, Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing filed this 20th day of April, 2016, with:

Docket Control
Arizona Corporation Commission
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Phoenix, Arizona 85007

1 Copy of the foregoing mailed this
2 20th day of April, 2016, to:

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 DOUG LITTLE - Chairman
3 BOB STUMP
4 BOB BURNS
5 TOM FORESE
6 ANDY TOBIN

7 IN THE MATTER OF THE PROPOSED }
8 AMENDMENTS TO THE PIPELINE }
9 SAFETY RULES A.A.C. R14-5-202, R14-5- }
10 203, R14-5-204, R14-5-205, AND R14-5-207. }

DOCKET NO. RG-00000A-15-0098

DECISION NO. _____

ORDER

11 Open Meeting
12 May 3 and 4, 2016
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 This matter concerns the renewal of an emergency rulemaking to modify Arizona
16 Administrative Code ("A.A.C.") Title 14, Chapter 5, Article 2, the Arizona Corporation
17 Commission ("Commission") rules for Pipeline Safety, by amending A.A.C. R14-5-202, R14-
18 5-203, R14-5-204, R14-5-205, and R14-5-207. The primary purpose of the renewal of
19 emergency rulemaking is to keep the Commission's Pipeline Safety rules in compliance with
20 federal requirements by maintaining the updates previously adopted to the rules'
21 incorporations by reference of various parts of Title 49 of the Code of Federal Regulations
22 ("49 CFR") and associated forms. The other modifications to the rules made by the
23 emergency rulemaking were designed to make the rules more clear, concise, understandable,
24 and effective in ensuring pipeline safety.

25 * * * * * * * * *

26 Having considered the entire record herein and being fully advised in the premises, the
27 Commission finds, concludes, and orders that:

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...

FINDINGS OF FACT**Procedural History**

1. On March 24, 2015, the Commission's Legal Division filed a memorandum requesting, on behalf of the Commission's Safety Division ("Staff"), that a docket be opened for the purpose of proposing amendments to the Pipeline Safety rules, A.A.C. R14-5-202, R14-5-203, R14-5-204, and R14-5-207. As a result, the above-captioned docket was opened.

2. On March 31, 2015, Staff issued a memorandum describing Staff's recommended modifications to the Pipeline Safety rules and including a proposed order for Commission consideration at the Open Meeting of April 14 and 15, 2015. In the proposed order, Staff recommended that the Commission commence the formal rulemaking process by filing a Notice of Rulemaking Docket Opening ("NRDO") and a Notice of Proposed Rulemaking ("NPRM") with the Office of the Secretary of State for publication in the *Arizona Administrative Register*. The proposed order provided the text of Staff's recommended rule modifications and Staff's recommended schedule for the rulemaking process.

3. On April 13, 2015, Staff filed Safety Division Proposed Amendment No. 1 ("Staff Amendment No. 1"). Staff Amendment No. 1 added a minor proposed amendment to A.A.C. R14-5-205, corrected typographical errors, and revised the recommended schedule for the rulemaking process.

4. At the Commission's Open Meeting on April 13, 2015, the Commission approved the proposed order, as amended by Staff Amendment No. 1.

5. On April 15, 2015, Staff filed a Notice of Errata stating that the caption for this matter should include R14-5-205.¹

6. On April 23, 2015, Decision No. 75023 was issued, directing Staff to prepare and file with the Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later than May 15, 2015, an NRDO and an NPRM including the text of Staff's recommended rule modifications as included in the Decision. The Decision also required that an oral proceeding

¹ The Commission's Docket Control Center revised the caption accordingly.

1 on the NPRM be held in Phoenix on June 18, 2015; established dates for the submission of
2 comments; and established other procedural deadlines and requirements.

3 7. On April 27, 2015, Staff filed Notice of Filing Staff Suggested Service List,
4 including a list of stakeholders Staff believed appropriate to include on the service list for this
5 matter.

6 8. On May 15, 2015, the NRDO and NPRM were published in the *Arizona*
7 *Administrative Register*.

8 9. On June 18, 2015, the oral proceeding for this matter was held before a duly
9 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
10 Arizona. Staff appeared through counsel. Robert Miller, Pipeline Safety Supervisor, provided a
11 statement concerning the rulemaking. No members of the public attended to provide oral
12 comment.

13 10. No members of the public provided written comments on the NPRM.

14 11. On July 8, 2015, Staff filed an Economic, Small Business, and Consumer Impact
15 Statement ("EIS"), along with a copy of the published NPRM.

16 12. On July 10, 2015, a Recommended Opinion and Order was issued by the
17 Commission's Hearing Division, for consideration at the Open Meeting of August 18 and 19,
18 2015. The Recommended Opinion and Order clarified the date parenthetical for the 49 CFR Parts
19 incorporated by reference in R14-5-202(B) and updated the date parenthetical for a U.S.
20 Department of Transportation Pipeline and Hazardous Material Safety Administration ("PHMSA")
21 form referenced in R14-5-204(A)(2).

22 13. At the Open Meeting on August 18, 2015, the Commission considered and
23 approved the Recommended Opinion and Order.

24 14. On August 26, 2015, Decision No. 75250 was issued, directing Staff to prepare and
25 file a Notice of Final Rulemaking ("NFRM") packet with the Office of the Attorney General
26 ("AG") for certification under A.R.S. § 41-1044. The Decision required Staff to include, in the
27 NFRM's Preamble, language demonstrating the need for an immediate effective date for the
28 rulemaking as provided under A.R.S. § 41-1032.

1 15. On September 16, 2015, Staff filed a memorandum showing that the NFRM packet
2 had been filed with the AG.

3 16. Subsequent to the filing of the NFRM packet, the Commission's Legal Division
4 was notified that the AG considered the modifications to the date parentheticals adopted in
5 Decision No. 75250 to constitute a substantial change under A.R.S. § 41-1025. The AG indicated
6 that the Commission could complete an emergency rulemaking, under A.R.S. § 41-1026, to make
7 the rule changes adopted in Decision No. 75250 effective pending completion of additional regular
8 rulemaking.

9 **Emergency Adoption of the Rules**

10 17. On October 19, 2015, Staff filed a Staff Proposed Order Approving Emergency
11 Rulemaking.

12 18. On October 20, 2015, Staff filed Safety Division Proposed Amendment No. 1,
13 written to replace Staff's original Proposed Order in its entirety.

14 19. At the Open Meeting on October 20, 2015, the Commission approved Staff's
15 Proposed Order, as amended by Safety Division Proposed Amendment #1.

16 20. On October 22, 2015, Decision No. 75289 was issued, directing Staff to prepare
17 and file with the AG, by October 23, 2015, an Emergency Rulemaking package complying
18 with the requirements of A.R.S. § 41-1001(16), § 41-1026, and A.A.C. R1-1-701; adopting the
19 text of R14-5-202, R14-5-203, R14-5-204, R14-5-205, and R14-5-207 as revised in Exhibit B
20 to Decision No. 75250; including a copy of Decision No. 75289 along with any additional
21 documentation required by the AG for approval under A.R.S. § 41-1026; and making the rule
22 revisions effective immediately upon filing with the Secretary of State.

23 21. On October 22, 2015, Staff filed an Emergency Rulemaking package with the
24 AG. A copy of the Emergency Rulemaking package was filed in the docket on October 23,
25 2015.

26 22. On December 15, 2015, the AG filed the Notice of Emergency Rulemaking
27 ("NERM") with the Office of the Secretary of State, making the rule revisions approved in
28 Decision No. 75289 effective on an emergency basis as provided in A.R.S. § 41-1026(D). The

1 NERM was published in the *Arizona Administrative Register* on January 1, 2016. A copy of
2 the NERM is attached hereto and incorporated herein as Exhibit 1.

3 **Supplemental Proposed Rulemaking**

4 23. On October 28, 2015, the Hearing Division issued a Recommended Order
5 recommending the filing of a Notice of Supplemental Proposed Rulemaking ("NSPRM"),
6 under A.R.S. § 41-1022(E), to propose the same rule revisions as adopted through the NERM.

7 24. At the Open Meeting on November 6, 2015, the Commission approved the
8 Recommended Order.

9 25. On November 25, 2015, Decision No. 75339 was issued, directing Staff to
10 prepare and file with the Secretary of State, by November 27, 2015, an NSPRM package
11 including the NSPRM language attached as Exhibit 1 to Decision No. 75339, conforming to
12 the requirements of A.A.C. R1-507, and conforming to any additional Secretary of State
13 requirements for publication. The Decision also scheduled an oral proceeding on the NSPRM
14 to be held on January 19, 2016.

15 26. The NSPRM was published in the *Arizona Administrative Register* on
16 December 11, 2015. A copy of the NSPRM is attached hereto and incorporated herein as
17 Exhibit 2.

18 27. On January 19, 2016, the oral proceeding was held, with one liquefied natural
19 gas ("LNG") facility operator providing oral comment. On the same date, the LNG facility
20 operator filed written comments regarding the NSPRM, specifically concerning disagreement
21 with R14-5-202(T).

22 28. On January 26, 2016, Staff filed responses to the LNG facility operator's
23 comments.

24 29. On January 28, 2016, a Procedural Order was issued requiring Staff, by
25 February 22, 2016, to file responses to a set of questions and allowing the LNG facility
26 operator and any other interested person, by March 17, 2016, to file responses to Staff's
27 responses. In response to a Staff request filed on February 22, 2016, the deadlines for the
28 filings were extended by a Procedural Order issued the same day.

1 30. On March 2, 2016, Staff filed its responses to the questions posed in the
2 Procedural Order.

3 31. On March 28, 2016, the LNG facility operator filed responses to Staff's
4 responses.

5 32. On April 1, 2016, a Procedural Order was issued requiring Staff, by April 15,
6 2016, to file a reply to the LNG facility operator's responses.

7 33. On April 15, 2016, Staff filed its reply.

8 34. The NSPRM, comments, and additional filings are currently under advisement
9 with the Commission's Hearing Division, pending issuance of a Recommended Opinion and
10 Order for Commission consideration at an Open Meeting.

11 **Renewal of Emergency Rules**

12 35. Pursuant to A.R.S. § 41-1026 (D), the rule revisions adopted through the NERM
13 will expire on June 12, 2016, unless renewed.

14 36. Pursuant to A.R.S. § 41-1026(D), a rule adopted on an emergency basis may be
15 renewed for an additional 180-day period if all of the following occur:

- 16 a. The agency determines that the emergency situation still exists,
17 b. The agency follows the procedures prescribed in A.R.S. § 41-1026,
18 c. The rule is approved by the AG pursuant to A.R.S. § 41-1026,
19 d. The agency has issued the rule as a proposed rule or has issued an alternative
20 proposed rule pursuant to section 41-1022,
21 e. The agency seeks approval of the renewal from the AG before the expiration
22 of the initial 180-day period, and
23 f. The agency files notice of the renewal and any required AG approval with
24 the Secretary of State and notice is published in the *Arizona Administrative*
25 *Register*.

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37. In Decision No. 75289, Findings of Fact No. 20, the Commission found the following:

20. As described in Decision No. 75250, the rationale behind and need for the rule revisions are as follows:³

18. In the NPRM Preamble and during the oral proceeding on June 18, 2015, Staff explained that the primary purpose of the rule amendments is to make the Commission's rules consistent with current federal pipeline safety regulations by updating incorporations by reference in the Commission's rules, to ensure that the Commission maintains compliance with the requirements of its intergovernmental agreement with the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"). This updating includes updates to the incorporations by reference for 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as several PHMSA reporting forms. The secondary purpose of the rule amendments is to clarify the rules.

19. Under Title 49, § 60105 of the U.S. Code ("49 U.S.C. § 60105"), the Commission holds certification from PHMSA authorizing the Commission to prescribe and enforce safety standards and practices for intrastate pipeline facilities and intrastate pipeline transportation.² (See 49 U.S.C. § 60105(a).) To maintain this certification, Staff must annually submit to PHMSA a certification stating, *inter alia*, that the Commission (1) has regulatory jurisdiction over the standards and practices to which the certification applies; (2) has adopted, by the date of certification, each applicable standard prescribed under 49 U.S.C. Chapter 601 or, if the standard was prescribed no later than 120 days before certification, is taking steps to adopt the standard; and (3) is enforcing each adopted standard through means including inspections by qualified Commission employees. (49 U.S.C. § 60105(b).) The certification filing must also identify the persons subject to the Commission's safety jurisdiction, describe specific types of reported accidents or incidents during the past 12 months, provide an investigation summary for each accident or incident, and describe the Commission's regulatory and enforcement practices. (49 U.S.C. § 60105(c).) The PHMSA may reject certification for a state authority if it determines that the state authority is not satisfactorily enforcing compliance with the applicable federal safety standards of 49 U.S.C. Chapter 601. (49 U.S.C. § 60105(f).) A state authority that carries out a safety program pursuant to certification under 49 U.S.C. § 60105 is eligible to obtain grant funding from PHMSA of up to 80 percent of the state authority's costs for the personnel, equipment, and activities reasonably required to

1 carry out the program for the next calendar year. (49
2 U.S.C. § 60107(a).) One of the performance factors
3 considered by PHMSA when determining the allocation of
4 grant funds to a state authority is whether the state has
5 adopted the applicable federal pipeline safety standards.
(49 CFR § 198.13(c)(7).) PHMSA can withhold payment
if it determines that a state authority is not satisfactorily
carrying out its safety program. (49 U.S.C. § 60107(b).)

6 20. At the oral proceeding on June 18, 2015,
7 Mr. Miller stated that the rulemaking must be effective by
8 December 31, 2015, to comply with PHMSA's deadline.
9 Mr. Miller further stated that the Commission's failure to
meet the requirements of the certification program could
result in loss of funding for the Commission's Pipeline
Safety program. (Tr. at 4-5.)

10 21. Staff asserted that because the rules at issue
11 are safety rules, it is in the public interest to have the rules
12 in effect and capable of enforcement as soon as possible,
and an immediate effective date is justified under A.R.S. §
41-1032(A)(1).

13 ² The Commission has also been authorized to act as an interstate
agent under 49 CFR Chapter 601.

14 ³ Decision No. 75250 at 4-5.

15 38. As required by A.R.S. § 41-1026(D)(1), the Commission finds that the
16 emergency situation continues to exist and that the effectiveness of the rule revisions adopted
17 through the NERM must be maintained for an additional 180-day period for the same reasons
18 quoted in Findings of Fact No. 37 above and previously set forth in Decision Nos. 75289 and
19 75250.

20 39. The Commission has satisfied the requirements of A.R.S. § 41-1026(D)(2), (3),
21 and (4) by following the procedures prescribed in A.R.S. § 41-1026, obtaining AG approval of
22 the original emergency rulemaking, and issuing the rule revisions in an NSPRM under A.R.S.
23 § 41-1022.

24 40. The Commission can satisfy the requirements of A.R.S. § 41-1026(D)(5) and (6)
25 by seeking approval of the renewal from the AG before the expiration of the initial 180-day
26 period and, once AG approval is obtained, ensuring that notice of the renewal and any required
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1 AG approval is filed with the Secretary of State for publication in the *Arizona Administrative*
2 *Register*.

3 41. The Commission has authority for the rule revisions under both its constitutional
4 authority and its statutory authority endowed by the legislature, specifically Article 15, § 3 of
5 the Arizona Constitution ("Art. 15, § 3"), A.R.S. § 40-441, A.R.S. § 40-202(A), A.R.S. § 40-
6 203, A.R.S. § 40-321(A), A.R.S. § 40-322, and A.R.S. § 40-336.

7 42. It is necessary and in the public interest for the Commission to direct Staff and
8 the Legal Division to:

- 9 a. Prepare and file with the AG, under A.R.S. § 41-1026(D), by May 6, 2016, a
10 request for renewal of the rule revisions adopted through the NERM,
11 including a Notice of Emergency Rulemaking (Renewal) including the rule
12 language from the original NERM and conforming to the requirements of
13 A.R.S. § 41-1001(16), A.R.S. § 41-1026, and A.A.C. R1-1-701, and any
14 additional documentation required by the AG for approval of the renewal or
15 required by the Office of the Secretary of State for publication in the *Arizona*
16 *Administrative Register*; and
17 b. Upon receiving approval of the renewal from the AG, prepare the documents
18 and take the actions necessary to ensure that the Notice of Emergency
19 Rulemaking (Renewal), along with any required documentation of Attorney
20 General approval, is filed with the Office of the Secretary of State for
21 publication in the *Arizona Administrative Register*, as required by A.R.S. §
22 41-1026(D)(6).

23 **CONCLUSIONS OF LAW**

24 1. Pursuant to Arizona Constitution, Art. 15, § 3 and A.R.S. §§ 40-202, 40-203, 40-
25 321, 40-322, 40-336, and 40-441, the Commission has the authority and jurisdiction to revise
26 A.A.C. Title 14, Chapter 5, Article 2 as adopted in the NERM and included in the NSPRM.

27 2. As required by A.R.S. § 41-1026(D)(1), the Commission has found that the
28 conditions giving rise to an emergency situation, as determined in Decision No. 75289, continue to

1 exist and that it is necessary for the Commission to obtain renewal of the rule revisions adopted in
2 the NERM as permitted under A.R.S. § 41-1026(D).

3 3. The Commission has complied with A.R.S. § 41-1026(D)(2), (3), and (4).

4 4. The Commission can satisfy the requirements of A.R.S. § 41-1026(D)(5) and (6)
5 by taking the actions described in Findings of Fact Nos. 40 and 42.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the Commission's Safety Division/Legal Division
8 shall, by May 6, 2016, prepare and file with the Office of the Attorney General a request for
9 renewal of the rule revisions adopted through the Notice of Emergency Rulemaking that
10 includes (1) a Notice of Emergency Rulemaking (Renewal) including the rule language from the
11 original Notice of Emergency Rulemaking and conforming to the requirements of A.R.S. § 41-
12 1001(16), A.R.S. § 41-1026, and A.A.C. R1-1-701, and (2) any additional documentation required
13 by the Attorney General for approval of the renewal or required by the Office of the Secretary of
14 State for publication in the *Arizona Administrative Register*.

15 IT IS FURTHER ORDERED that the Commission's Safety Division/Legal Division shall
16 prepare the documents and take the actions necessary to ensure that, upon receiving approval of
17 the renewal from the Office of the Attorney General, the Notice of Emergency Rulemaking
18 (Renewal) is filed with the Office of the Secretary of State for publication in the *Arizona*
19 *Administrative Register*, as required by A.R.S. § 41-1026(D)(6).

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1 IT IS FURTHER ORDERED that that the Commission's Safety Division/Legal Division is
2 authorized to make non-substantive changes in the text of the rule revisions included in the
3 original Notice of Emergency Rulemaking and any of the additional documents required by the
4 Office of the Attorney General or the Office of the Secretary of State, in response to comments
5 received from the Office of the Attorney General or the Office of the Secretary of State during the
6 approval, publication, and/or codification process, unless the Commission requires otherwise after
7 notification of those changes.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

10
11 _____
CHAIRMAN

COMMISSIONER

12
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14 IN WITNESS WHEREOF, I, JODI JERICH, Executive
15 Director of the Arizona Corporation Commission, have
16 hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2016.

17
18 _____
JODI JERICH
EXECUTIVE DIRECTOR

19 DISSENT: _____
20

21 DISSENT: _____
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27
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SERVICE LIST FOR: ARIZONA CORPORATION COMMISSION PROPOSED
RULEMAKING
DOCKET NO. RG-00000A-15-0098

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3 P.O. Box 67
4 Tuba City, Arizona 86045

5 Nathan Shelley
6 Unisource Energy Services
7 2901 West Shamrell Blvd., #110
8 Flagstaff, Arizona 86001

9 William Stephens
10 CITY OF BENSON GAS
11 160 South Huachuca
12 Benson, Arizona 85602

13 Bradley Carroll
14 UNS Gas, Inc.
15 P.O. Box 711
16 Tucson, Arizona 85702

John Richardson
Valle Air Park
801 South State HWY 64, Space 100
Valle – Williams, Arizona 85007-2927

Rick Duncan
North Baja Pipeline LLC
201 West North River Dr. #505
Spokane, Washington 99201

EXHIBIT 1

NOTICES OF EMERGENCY RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Emergency Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the emergency rules should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF EMERGENCY RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

[R15-196]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R14-5-202	Amend
R14-5-203	Amend
R14-5-204	Amend
R14-5-205	Amend
R14-5-207	Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: Arizona Constitution, Article XV § 3.
 Implementing statute: A.R.S. § 40-441
3. **The effective date of the rule:**
 December 15, 2015

 The rule takes effect upon filing the Notice of Emergency Rulemaking with the Office of the Secretary of State by the Office of the Attorney General. An exception from the effective date provisions in A.R.S. § 41-1032(A) is necessary to preserve public health and safety by immediately bringing the state rules into conformity with Federal Regulations relating to the safe transportation of natural gas and hazardous materials by pipeline in Arizona.
4. **Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:**
 None
5. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Charles Hains, Commission Counsel, Legal Division
 Address: Arizona Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007

 Telephone: (602) 542-3402
 Fax: (602) 542-4870
 E-mail: Chains@azcc.gov
 Web site: www.azcc.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 The purpose of the proposed rules is to amend, R14-5-202, R14-5-203, R14-5-204, R14-5-205 and R14-5-207, of the Pipeline Safety Rules. The amendments to R14-5-202, R14-5-203 R14-5-204, R14-5-205 and R14-5-207 are revised for clarity and to update incorporations by reference of the most recent amendments to the Code of Federal Regulations ("CFR"), Title 49.

 The Commission is exempt from the Executive Order 2015-01 requirement to obtain prior approval before engaging in rulemaking proceedings.



7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Small Business Subject to the Rules: These rules do not change the responsibilities of master meter operators already established in 1970 by the adoption by the Commission of the Code of Federal Regulations, Title 49, Parts 191 and 192.

The new rules may increase testing costs for operators of liquefied natural gas facilities when welding is performed, although such costs should be minimal as welding is a non-recurring activity. Such costs will only be incurred if the liquefied natural gas facility operator is not already ensuring that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or appurtenances.

The new rules will have no effect upon consumers or users of the gas service provided by regulated public utilities as they presently are required to be in compliance with all standards, but, this will benefit consumers, users and the general public by maintaining a safe pipeline system.

The new rules are the least costly method for obtaining compliance with the long standing minimum safety standards. The rules do not impose additional standards. There is no less intrusive method

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule amendments bring the state rules into conformity with the federal law, thereby paralleling the federal law and therefore are neither more nor less stringent than the federal law.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

11. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

49 CFR 40 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 191 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 192 (October 1, 2015), except I(A)(2) and (3) of Appendix D to part 192 adopted in R14-5-202(B)

49 CFR 193 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 195 (October 1, 2015), except 195.1(b)(2), (3), and (4) adopted in R14-5-202(B)

49 CFR 199 (October 1, 2015) adopted in R14-5-202(B)

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

The Commission finds that it is necessary to adopt the rule amendments included in this Notice of Emergency Rulemaking as an emergency measure, and with an immediate effective date, because the rule amendments must take effect before January 1, 2016, in order for the Commission to (1) protect the public health, safety, and welfare; (2) comply with a deadline imposed by a federal program; (3) avoid violating requirements of a federal regulation; (4) avoid an imminent budget reduction; and (5) avoid serious prejudice to the public interest. The Commission's need to conduct emergency rulemaking is not due to its own inaction or delay and could not have been averted by timely compliance with the notice and public participation provisions of A.R.S. Title 41, Chapter 6.

The Commission attempted to complete the rule amendments included in this emergency rulemaking through regular rulemaking, for which a Notice of Proposed Rulemaking was published at 21 A.A.R. 674 (May 15, 2015); an oral proceeding was held on June 18, 2015; and a Notice of Final Rulemaking packet was filed with the Office of the Attorney General ("AG"), pursuant to A.R.S. § 41-1044, on September 15, 2015. Subsequently, the Commission was notified by the AG that clarifying modifications to date parentheticals included in the Notice of Final Rulemaking were considered to constitute a substantial change under A.R.S. § 41-1025. These circumstances presented an unanticipated delay in the regular rulemaking process making it impossible for the Commission to adopt the rule amendments through regular rulemaking before January 1, 2016. Thus, the Commission is adopting the rule amendments as an emergency measure, to ensure that the rule amendments become effective before January 1,



2016, and will follow this emergency rulemaking with additional regular rulemaking to adopt the rule amendments. The primary purpose of the rule amendments is to make the Commission's rules consistent with current federal pipeline safety regulations by updating incorporations by reference in the Commission's rules to ensure that the Commission maintains compliance with the requirements of its intergovernmental agreement with the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"). The rule amendments update the incorporations by reference for 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as several U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA") reporting forms. As a secondary purpose, the rule amendments also clarify some of the provisions in the rules.

Under 49 U.S.C. § 60105, the Commission holds certification from PHMSA authorizing the Commission to prescribe and enforce safety standards and practices for intrastate pipeline facilities and intrastate pipeline transportation. The Commission is also authorized to act as an interstate agent under 49 CFR Chapter 601. To maintain its certification, the Commission must annually submit to PHMSA a certification stating, *inter alia*, that the Commission (1) has regulatory jurisdiction over the standards and practices to which the certification applies; (2) has adopted, by the date of certification, each applicable standard prescribed under 49 U.S.C. Chapter 601 or, if the standard was prescribed no later than 120 days before certification, is taking steps to adopt the standard; and (3) is enforcing each adopted standard through means including inspections by qualified Commission employees. The certification filing must also identify the persons subject to the Commission's safety jurisdiction, describe specific types of reported accidents or incidents during the past 12 months, provide an investigation summary for each accident or incident, and describe the Commission's regulatory and enforcement practices. PHMSA may reject certification for a state authority if it determines that the state authority is not satisfactorily enforcing compliance with the applicable federal safety standards of 49 U.S.C. Chapter 601. A state authority that carries out a safety program pursuant to certification under 49 U.S.C. § 60105 is eligible to obtain grant funding from PHMSA of up to 80 percent of the state authority's costs for the personnel, equipment, and activities reasonably required to carry out the program for the next calendar year. One of the performance factors considered by PHMSA when determining the allocation of grant funds to a state authority is whether the state has adopted the applicable federal pipeline safety standards. PHMSA can withhold payment if it determines that a state authority is not satisfactorily carrying out its safety program.

If the Commission fails to make the rule amendments effective by December 31, 2015, the compliance deadline under the PHMSA certification program, the Commission could lose federal grant funding for the Commission's Pipeline Safety program. This would constitute an imminent budget reduction and would result in serious prejudice to the public interest, which is best served by a robust Pipeline Safety program that has sufficient resources to enforce the most current federal safety standards. Because the rules at issue establish safety standards consistent with the most current federal safety standards, it is in the public interest to have the rules in effect and capable of enforcement as soon as possible.

13. The date the Attorney General approved the rule:

December 15, 2015

14. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

ARTICLE 2. PIPELINE SAFETY

Section

- R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems
- R14-5-203. Pipeline Incident Reports
- R14-5-204. Annual Reports
- R14-5-205. Commission Investigations
- R14-5-207. Master Meter System Operators

ARTICLE 2. PIPELINE SAFETY

R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems

A. No Change

- B.** Subject to the definitional changes in R14-5-201 and the modifications noted in this Section, the Commission adopts, incorporates, and approves as its own 49 CFR 40; 191; 192, except (1)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199(October 1, 2012 October 1, 2015), including no future editions or amendments, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from the U.S. Government Printing Office, 710 North Capital Street N.W., Washington DC 20401, and at <http://>



www.gpo.gov/fdsys/. For purposes of 49 CFR 192, "Business District" means an area where the public congregate for economic, industrial, religious, educational, health, or recreational purposes and two or more buildings used for these purposes are located within 100 yards of each other.

- C. No change
 - 1. No change
 - 2. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. An operator of an intrastate pipeline transporting LNG, gas, or a hazardous liquid shall use a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, ~~October 1, 2010 (and no future amendments)~~, as incorporated by reference in subsection (B), and copies available from the Office of Pipeline Safety and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, except Sections (I)(A)(2) and (3) of Appendix D to Part 192 shall not be utilized. This modifies 49 CFR 192.463(a), 193.2629, and 195.571.
- K. No change
- L. No change
- M. No change
- N. An operator of an intrastate pipeline transporting gas or hazardous liquid that constructs an underground pipeline system using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. This modifies 49 CFR 192.321, 192.361, and 195.246.
- O. No change
- P. No change
- Q. An operator of an intrastate pipeline transporting gas shall survey and grade all detected leakage according to the standards provided below, which modify 49 CFR 192.706 and 192.723:
 - 1. In the case of all gas except LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three Two~~ Park Avenue, New York, NY 10016-5990; and modified by omitting 4.4(c) and by replacing "should" with "shall" each time it appears.
 - 2. In the case of LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three Two~~ Park Avenue, New York, NY 10016-5990; and modified by replacing "should" with "shall" each time it appears.
 - 3. No change
- R. No change
- S. No change
- T. An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303.
- ~~T.U.~~ In the event of an unknown failure of a gas, LNG, or hazardous liquid pipeline, resulting in the operator's being required to provide a telephonic or written report under R14-5-203 (B) or (C) and in the operator's removing a portion of the failed pipeline, the following shall occur:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. Within 48 hours after receiving telephonic notification pursuant to subsection (F U)(2), the Office of Pipeline Safety shall:



- a. Determine, based on the information provided by the operator and the availability, adequacy, and reliability of any pipeline testing laboratory operated by the operator, whether it is necessary to have the removed portion of pipeline tested at an independent laboratory; and
 - b. Telephonically notify the operator either:
 - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (F U)(5), to determine the cause or causes of the failure; or
 - ii. That the operator is not required to have the removed portion of pipeline tested by an independent laboratory and instead must conduct testing in its own pipeline testing laboratory, after which the operator may discard the removed portion of pipeline;
 4. After providing telephonic notice as provided in subsection (F U)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
 5. If the Office of Pipeline Safety directs testing by an independent laboratory:
 - a. The Office of Pipeline Safety shall:
 - i. Determine, as provided in subsection (F U)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 6. In determining an independent laboratory to perform testing required under subsection (F U), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
 - No change
- ~~U.V.~~ An operator shall ensure that all repair work performed on an existing intrastate pipeline transporting LNG, hazardous liquid, or gas complies with this Article.
- ~~W.W.~~ The Commission may waive compliance with any of the requirements of this Section upon a finding that such a waiver is in the interest of public and pipeline safety.
- ~~W.X.~~ To ensure compliance with the provisions of this Article, the Commission or an authorized representative thereof may enter the premises of an operator of an intrastate pipeline to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the pipeline system operation.

R14-5-203. Pipeline Incident Reports

- A. No change
- B. No change
 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 2. No change
 - a. No change



- i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- C. No change
- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. A written incident report concerning a gas pipeline system shall be completed using the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA at East Building, Second Floor, 1200 New Jersey Ave., SE, Washington, DC 20590, and at <http://www.phmsa.dot.gov/pipeline/library/forms>:
 - a. Form PHMSA F 7100.1: Incident Report – Gas Distribution System (~~June 2011~~October 2014), including no future editions or amendments;
 - b. Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments; or
 - c. Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments.
 - 3. An operator of an intrastate pipeline transporting hazardous liquid shall file a written incident report completed using Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (~~December 2012~~July 2014), including no future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from PHMSA as set forth in subsection (C)(2), any time the operator would have been required to make a notification as required under R14-5-203(B)(2).
 - 4. A written incident report required by this Section shall be filed with the Office of Pipeline Safety within the time specified below:
 - a. For an LNG or gas - incident, within 20 days after detection; and
 - b. No change
 - 5. No change
 - 6. After an incident involving shutdown or partial shutdown of a master meter system, an operator of a gas pipeline system shall request and obtain a clearance from the Office of Pipeline Safety before turning on or reinstating service to ~~a the~~ master meter system or portion of the master meter system that was shut down.

R14-5-204. Annual Reports

- A. An operator of an intrastate pipeline shall file with the Office of Pipeline Safety, not later than March 15, for the preceding calendar year, an annual report completed using one of the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA as provided in R14-5-



203(C)(2):

1. Form PHMSA F 7000-1.1: Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (June ~~2011~~2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
2. Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (~~January 2011~~ May 2015), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
3. Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form; or
4. Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form.

B. No change

R14-5-205. Commission Investigations

A. No change

B. While investigating an incident, accident, or event, the Commission; or an authorized agent of the Commission may:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

R14-5-207. Master Meter System Operators

A. No change

B. An operator of a master meter system shall comply with this Section as a condition of receiving service from a provider. Noncompliance with this Section by an operator of a master ~~meters~~ meter system constitutes grounds for termination of service by the provider when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the provider oral instructions to terminate service, with written confirmation to be furnished within 24 hours.

C. No change

D. No change

1. No change
2. No change

E. No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change

F. No change

G. No change

H. No change

I. No change

J. No change

K. No change

L. No change

1. No change
2. No change
3. No change
4. No change

M. No change

N. No change

1. No change
2. No change
3. No change
4. No change

O. No change

1. No change
2. No change
3. No change
4. No change



- P. In the event of an unknown failure of a gas pipeline resulting in a master meter system operator's being required to provide a report under subsection (Q) and in the operator's removing a portion of the failed pipeline, the following shall occur:
1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 4. No change
 5. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 6. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
- Q. No change
1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - b. No change
 - c. An event involving permanent or temporary discontinuance of service to a master meter system or any portion of a master meter system due to a failure of a leak test or for any purpose other than to perform routine maintenance; or
 - d. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change



- 3. No change
- R. No change
- S. To ensure compliance with all applicable provisions of this Article, the Commission or an authorized representative thereof; may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the operation of the master meter system.

EXHIBIT 2



NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKINGS

This section of the *Arizona Administrative Register* contains Notices of Supplemental Proposed Rulemaking.

After an agency has filed a Notice of Proposed Rulemaking and it is published in the *Register*, an agency may decide to make substantial changes to the rule after it is proposed.

The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed substantial changes. When filed, the Notice is published under the deadline schedule in the back of the *Register*. The Notice

of Supplemental Proposed Rulemaking shall be published in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the rules should be addressed to the agency that promulgated the rules. Refer to item #4 of the Preamble of this Notice to contact the person charged with the rulemaking and item #10 for information related to public hearings and oral comments.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

[R15-182]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the Register as specified in R1-1-409(A). A list of any other related notices published in the Register to include the as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 21 A.A.R. 685, May 15, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 674, May 15, 2015

- | | |
|---|--------------------------|
| 2. <u>Articles, Parts, or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R14-5-202 | Amend |
| R14-5-203 | Amend |
| R14-5-204 | Amend |
| R14-5-205 | Amend |
| R14-5-207 | Amend |

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes/laws: A.R.S. § 40-441, Arizona Constitution, Article 15, § 3

Implementing statutes: A.R.S. §§ 40-441, 40-202(A), 40-203, 40-321(A), 40-322, 40-336

4. The agency's contact person who can answer questions about the rulemaking:

Name: Charles Hains, Commission Counsel, Legal Division

Address: Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: CHains@azcc.gov

Web site: www.azcc.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Commission's Pipeline Safety rules establish construction and safety standards for gas, liquefied natural gas ("LNG"), and hazardous liquid pipeline systems and for master meter systems. The rules are designed to protect all residents of and visitors to the State of Arizona by helping to ensure that the handling and transportation of gas, LNG, and hazardous liquids are conducted in the safest manner possible. The primary purpose of this rulemaking is to make the Commission's Pipeline Safety rules consistent with current federal pipeline safety regulations so that the Commission maintains compliance with the requirements of its intergovernmental agreement with the U.S.



Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"). The rulemaking accomplishes this by updating the incorporations by reference for 49 CFR Parts 40, 191, 192, 193, 195, and 199, as well as several PHMSA reporting forms, and by clarifying some requirements of the rules.

Under Title 49, § 60105 of the U.S. Code ("49 U.S.C. § 60105"), the Commission holds certification from PHMSA authorizing the Commission to prescribe and enforce safety standards and practices for intrastate pipeline facilities and intrastate pipeline transportation. (See 49 U.S.C. § 60105(a).) The Commission is also authorized to act as an interstate agent under 49 CFR Chapter 601. To maintain its certification, the Commission must annually submit to PHMSA a certification stating, *inter alia*, that the Commission (1) has regulatory jurisdiction over the standards and practices to which the certification applies; (2) has adopted, by the date of certification, each applicable standard prescribed under 49 U.S.C. Chapter 601 or, if the standard was prescribed no later than 120 days before certification, is taking steps to adopt the standard; and (3) is enforcing each adopted standard through means including inspections by qualified Commission employees. (49 U.S.C. § 60105(b).) The certification filing must also identify the persons subject to the Commission's safety jurisdiction, describe specific types of reported accidents or incidents during the past 12 months, provide an investigation summary for each accident or incident, and describe the Commission's regulatory and enforcement practices. (49 U.S.C. § 60105(c).) PHMSA may reject certification for a state authority if it determines that the state authority is not satisfactorily enforcing compliance with the applicable federal safety standards of 49 U.S.C. Chapter 601. (49 U.S.C. § 60105(f).) A state authority that carries out a safety program pursuant to certification under 49 U.S.C. § 60105 is eligible to obtain grant funding from PHMSA of up to 80 percent of the state authority's costs for the personnel, equipment, and activities reasonably required to carry out the program for the next calendar year. (49 U.S.C. § 60107(a).) One of the performance factors considered by PHMSA when determining the allocation of grant funds to a state authority is whether the state has adopted the applicable federal pipeline safety standards. (49 CFR § 198.13(c)(7).) PHMSA can withhold payment if it determines that a state authority is not satisfactorily carrying out its safety program. (49 U.S.C. § 60107(b).) PHMSA requires the Commission to update its Pipeline Safety rules to the current federal standards by December 31, 2015.

The Commission commenced this rulemaking through a Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking published in the *Arizona Administrative Register* on May 15, 2015. The Commission held an oral proceeding on June 18, 2015, and did not receive any oral or written public comments on the rulemaking. On August 26, 2015, the Commission approved a Notice of Final Rulemaking ("NFRM") package for filing with the Attorney General ("AG") for certification under A.R.S. § 41-1044. The NFRM included language demonstrating the need for an immediate effective date for the rulemaking as provided under A.R.S. § 41-1032. The Commission filed the NFRM package with the AG on September 15, 2015. Subsequent to the filing of the NFRM package, the AG notified the Commission that the AG considered modifications made to a date parenthetical included in the NFRM to constitute a substantial change under A.R.S. § 41-1025 and thus would not approve the NFRM. The Commission withdrew the NFRM package and is issuing this Notice of Supplemental Proposed Rulemaking to continue the regular rulemaking process to promulgate the updated rules.

Because the Commission's failure to meet the requirements of the certification program could result in loss of funding for the Commission's Pipeline Safety program, and the PHMSA deadline for the Commission to update its Pipeline Safety rules to the current federal standards is December 31, 2015, the Commission also filed a Notice of Emergency Rulemaking ("NERM") with the AG on October 22, 2015, under A.R.S. § 41-1026, to adopt the rule revisions herein.

At the time the NFRM was approved by the Commission, the most recent codification of 49 CFR Parts 40, 191, 192, 193, 195, and 199 had been issued on October 1, 2014. However, 49 CFR Parts 192, 193, 195, and 199 had recently been amended through a PHMSA rulemaking. Thus, in the NFRM, the Commission included the following parenthetical date citation for the 49 CFR Parts: "~~(October 1, 2012)~~ October 1, 2014, as amended by the Final Rule published at 80 Fed. Reg. 168 (January 5, 2015) and effective March 6, 2015." The Notice of Proposed Rulemaking had included a parenthetical date citation of February 5, 2015, which was intended to represent the current version of the 49 CFR Parts as of March 31, 2015, when the language for the proposed rulemaking was initially provided to the Commissioners for consideration at an Open Meeting. The Commission found that the revision to the date parenthetical included in the NFRM would not result in a substantial change to the proposed rules, under A.R.S. § 41-1025, because the revision did not change the persons affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules. The AG disagreed, however, concluding that the revision resulted in a substantial change.

The rule text in the NFRM also differed from that in the propose rulemaking because it updated the parenthetical date for Form PHMSA F 7100.1-1, located in R14-5-204(A)(2), by replacing "(January 2011)" with "~~(January 2011)~~ May 2015." The Commission also found that this revision would not result in a substantial change because the



revision did not change the persons affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules. The January 2011 form and the May 2015 form differ in that the May 2015 form requires the preparer to check two additional boxes to identify commodity group and operator type and requires the preparer to break down total excavation damage events by root cause rather than just reporting the total. Both versions have burden estimates of approximately 16 hours.

The rule language included in this Notice of Supplemental Proposed Rulemaking differs from that included in the NFRM only in the parenthetical date citation for the 49 CFR Parts incorporated by reference in R14-5-202(B). A new codification of the 49 CFR Parts was issued on October 1, 2015, in accordance with the U.S. Government Publishing Office's regular codification schedule. Because this new codification includes all of the updates reflected in the revised date parenthetical included for the NFRM, and the new codification can be referenced more simply, the Commission is including the October 1, 2015, date in this Notice of Supplemental Proposed Rulemaking.

Through the NERM, the Commission will comply with the PHMSA requirement for the Commission's Pipeline Safety rules to be consistent with the current federal pipeline safety standards before January 1, 2016. Yet A.R.S. § 41-1026(D) provides that if an agency has not issued either a Notice of Proposed Rulemaking or a Notice of Supplemental Proposed Rulemaking to adopt rule revisions consistent with its NERM within 180 days after the effective date of the rules as revised by the NERM, the rules as revised by the NERM will expire and will be ineligible for renewal. Thus, the Commission can only maintain its compliance by engaging in regular rulemaking.

For the Commission to preserve public health and safety and to maintain the Commission's compliance with federal requirements, the regular rulemaking must be completed and must become effective as quickly as possible. If the Commission fails to adopt the rule updates permanently through regular rulemaking, the Commission could lose federal grant funding for the Commission's Pipeline Safety program. This would constitute an imminent budget reduction and would result in serious prejudice to the public interest, which is best served by a robust Pipeline Safety program that has sufficient resources to enforce the current federal safety standards. Because the rules at issue establish safety standards consistent with the current federal safety standards, it is in the public interest to have the rules in effect and capable of enforcement as soon as possible. The Commission intends for this rulemaking to be adopted with an immediate effective date, under A.R.S. § 41-1032(A)(1) and (2), to preserve the public peace, health, and safety, and to avoid a violation of federal law or regulation.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None

7. An explanation of the substantial change which resulted in the supplemental notice:

As described in item 5, the Commission does not believe that the changes made to the text of the proposed rules after the Notice of Proposed Rulemaking resulted in a substantial change under A.R.S. § 41-1025(B) and is issuing this Notice of Supplemental Proposed Rulemaking to move forward with its regular rulemaking in response to the AG's not approving the NFRM. The differences between the rules as published in the Notice of Proposed Rulemaking and the rules as set forth herein are as follows:

- R14-5-202(B) is revised by replacing "(October 1, 2012 February 5, 2015)" with "(October 1, 2012 October 1, 2015)",
- R14-5-204(A)(2) is revised by replacing "(January 2011)" with "(January 2011 May 2015)" to update the incorporation by reference for Form PHMSA F 7100.1-1, and
- The text of subsections that are not being changed is no longer set forth in full.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision:
Not applicable

9. The preliminary summary of the economic, small business, and consumer impact:

The Commission's Pipeline Safety rules establish construction and safety standards for gas, LNG, and hazardous liquid pipeline systems and for master meter systems. The rules apply to intrastate operators of natural gas and other gas pipelines, intrastate operators of hazardous liquid pipelines, and operators of master meter gas distribution systems. The Commission's Pipeline Safety rules adopt the standards established by PHMSA through incorporation by reference of most of 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as PHMSA forms. This rulemaking updates those incorporations by reference, to make the Commission's rules consistent with the new codification of 49 CFR and the newest PHMSA forms; makes minor technical corrections; and clarifies the Commission's rules.

Other than operators of LNG facilities, intrastate operators who are already complying with the federal pipeline safety regulations will not be financially impacted by the rulemaking. Operators of LNG facilities may experience



increased testing costs when welding is performed, although the additional costs are expected to be minimal because welding is a non-recurring activity. The increased costs will be incurred only if an LNG facility operator is not already ensuring that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or appurtenances.

The small businesses subject to the rules are master meter system operators, whose responsibilities will not be changed through this rulemaking.

The Commission will incur minimal costs as a result of the rulemaking, but will benefit substantially because the rulemaking will allow the Commission to maintain compliance with the PHMSA requirement for the Commission's Pipeline Safety rules to be consistent with current federal pipeline safety standards. This will allow the Commission to maintain its certification as an agent and its eligibility for federal grant funding to cover operating costs for the Pipeline Safety program.

The rulemaking should have no economic impact on consumers or users of gas service. However, the rulemaking will benefit all residents of and visitors to the State of Arizona by helping to ensure that the handling and transportation of gas, LNG, and hazardous liquids are conducted in the safest manner possible.

This rulemaking is the least costly method for achieving Commission compliance with the PHMSA requirements and protecting the public health and safety.

10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Robert Miller, Office of Pipeline Safety
 Address: Arizona Corporation Commission
 2200 N. Central Ave., Ste. 200
 Phoenix, AZ 85004
 Telephone: (602) 262-5601
 Fax: (602) 262-5620
 E-mail: RMiller@azcc.gov
 Web site: www.azcc.gov

11. The time, place, and nature of the proceedings to make, amend, renumber or repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

Date: January 19, 2016
 Time: 10:00 a.m.
 Location: Arizona Corporation Commission
 Hearing Room No. 1
 1200 W. Washington St.
 Phoenix, AZ 85007

Nature: Oral Proceeding

The Commission requests that written comments be submitted on or before January 19, 2016, to the Commission's Docket Control at 1200 W. Washington St., Phoenix, AZ 85007. Please reference Docket No. RG-00000A-15-0098 on all comments submitted to Docket Control.

Oral comments may be made at the oral proceeding on January 19, 2016.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used;**

Not applicable

b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law;**

Not applicable

c. **Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states;**

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R14-5-202(B): 49 CFR 40; 191; 192, except (1)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199 (October 1, 2015)
 R14-5-202(Q)(1): ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983



- R14-5-202(Q)(2): ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983
- R14-5-203(C)(2)(a): Form PHMSA F 7100.1: Incident Report – Gas Distribution System (October 2014)
- R14-5-203(C)(2)(b): Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014)
- R14-5-203(C)(2)(c): Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (October 2014)
- R14-5-203(C)(3): Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (July 2014)
- R14-5-204(A)(1): Form PHMSA F 7000-1:1 Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (June 2014)
- R14-5-204(A)(2): Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (May 2015)
- R14-5-204(A)(3): Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014)
- R14-2-204(A)(4): Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (October 2014)

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

ARTICLE 2. PIPELINE SAFETY

Section

- R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems
- R14-5-203. Pipeline Incident Reports
- R14-5-204. Annual Reports
- R14-5-205. Commission Investigations
- R14-5-207. Master Meter System Operators

ARTICLE 2. PIPELINE SAFETY

R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems

- A. No change
- B. Subject to the definitional changes in R14-5-201 and the modifications noted in this Section, the Commission adopts, incorporates, and approves as its own 49 CFR 40; 191; 192, except (I)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199(~~October 1, 2012~~ October 1, 2015), including no future editions or amendments, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from the U.S. Government Printing Office, 710 North Capital Street N.W., Washington DC 20401, and at <http://www.gpo.gov/fdsys/>. For purposes of 49 CFR 192, "Business District" means an area where the public congregate for economic, industrial, religious, educational, health, or recreational purposes and two or more buildings used for these purposes are located within 100 yards of each other.
- C. No change
1. No change
2. No change
- D. No change
- E. No change
1. No change
2. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. An operator of an intrastate pipeline transporting LNG, gas, or a hazardous liquid shall use a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, ~~October 1, 2010 (and no future amendments)~~, as incorporated by reference in subsection (B), and copies available from the Office of Pipeline Safety and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, except Sections (I)(A)(2) and (3) of Appendix D to Part 192 shall not be utilized. This modifies 49 CFR 192.463(a), 193.2629, and 195.571.
- K. No change



- L. No change
- M. No change
- N. An operator of an intrastate pipeline transporting gas or hazardous liquid that constructs an underground pipeline system using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. This modifies 49 CFR 192.321, 192.361, and 195.246.
- O. No change
- P. No change
- Q. No change
 - 1. In the case of all gas except LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three~~ Two Park Avenue, New York, NY 10016-5990; and modified by omitting 4.4(c) and by replacing "should" with "shall" each time it appears.
 - 2. In the case of LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three~~ Two Park Avenue, New York, NY 10016-5990; and modified by replacing "should" with "shall" each time it appears.
 - 3. No change
- R. No change
- S. No change
- T. An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303.
- ~~T.U.~~ No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. Within 48 hours after receiving telephonic notification pursuant to subsection (~~T U~~)(2), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (~~T U~~)(5), to determine the cause or causes of the failure; or
 - ii. No change
 - 4. After providing telephonic notice as provided in subsection (~~T U~~)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
 - 5. No change
 - a. No change
 - i. Determine, as provided in subsection (~~T U~~)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - 6. In determining an independent laboratory to perform testing required under subsection (~~T U~~), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. No change



- ii. No change
- c. No change
 - i. No change
 - ii. No change
- d. No change

~~U.V.~~ No change

~~V.W.~~ No change

~~W.X.~~ No change

R14-5-203. Pipeline Incident Reports

A. No change

B. No change

- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
- 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
- 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change

C. No change

- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change



2. No change
 - a. Form PHMSA F 7100.1: Incident Report – Gas Distribution System (~~June 2011~~October 2014), including no future editions or amendments;
 - b. Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments; or
 - c. Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments.
3. An operator of an intrastate pipeline transporting hazardous liquid shall file a written incident report completed using Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (~~December 2012~~July 2014), including no future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from PHMSA as set forth in subsection (C)(2), any time the operator would have been required to make a notification as required under R14-5-203(B)(2).
4. No change
 - a. For an LNG or gas - incident, within 20 days after detection; and
 - b. No change
5. No change
6. After an incident involving shutdown or partial shutdown of a master meter system, an operator of a gas pipeline system shall request and obtain a clearance from the Office of Pipeline Safety before turning on or reinstating service to ~~a~~ the master meter system or portion of the master meter system that was shut down.

R14-5-204. Annual Reports

- A. No change
 1. Form PHMSA F 7000-1.1: Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (~~June 2011~~2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
 2. Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (~~January 2011~~May 2015), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
 3. Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form; or
 4. Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form.
- B. No change

R14-5-205. Commission Investigations

- A. No change
- B. While investigating an incident, accident, or event, the Commission; or an authorized agent of the Commission may:
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change

R14-5-207. Master Meter System Operators

- A. No change
- B. An operator of a master meter system shall comply with this Section as a condition of receiving service from a provider. Noncompliance with this Section by an operator of a master ~~meters~~ meter system constitutes grounds for termination of service by the provider when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the provider oral instructions to terminate service, with written confirmation to be furnished within 24 hours.
- C. No change
- D. No change
 1. No change
 2. No change
- E. No change
 1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change



- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- M. No change
- N. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- O. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- P. In the event of an unknown failure of a gas pipeline resulting in a master meter system operator's being required to provide a report under subsection (Q) and in the operator's removing a portion of the failed pipeline, the following shall occur:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - 4. No change
 - 5. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - 6. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
- Q. No change
 - 1. No change



- a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
- b. No change
- c. An event involving permanent or temporary discontinuance of service to a master meter system or any portion of a master meter system due to a failure of a leak test or for any purpose other than to perform routine maintenance; or
- d. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- 3. No change
- R. No change
- S. To ensure compliance with all applicable provisions of this Article, the Commission or an authorized representative thereof, may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the operation of the master meter system.